may be noted in several States to adopt a more equitable adjustment.[28] *S. A.*

CONTRACTS IN RESTRAINT OF TRADE—GOOD WILL—INJUNCTION—In the sale of the good will of a semi-professional establishment, it was recently decided[1] that the vendor impliedly covenants not to re-enter or compete in any way with the vendee in the territory which his business previously covered. For the purposes of this discussion, it is sufficient to state that the Court based its decision on the distinction between the sale of the good will of a commercial enterprise and that of a professional concern, holding that in the latter instance the vendor tacitly consents not to re-establish himself in the vicinity of the old business, for to do otherwise would be in derogation of the vendee's rights.

Contracts in total or partial restraint of trade were originally held void[2] as against public policy. This was based on the theory that no man could bind himself so as to deprive the sovereign of his services. Subsequently, the Courts recognized the validity of such agreements when the restraint was only partial, the party being bound as to such stipulations of time and space reasonable in their nature and founded upon adequate consideration.[3] Today the Courts freely extend relief by injunction where the restriction as to time or place is no more than is fairly and reasonably necessary for the proper protection of the covenantee.[4] This principle applies with the same force when the transaction is for the sale of a professional business[5] as distinguished from one in the nature of a trade.

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[28] The Legislature of Massachusetts has provided that personal property of a resident lying without the State shall be exempt from the collateral inheritance tax if the personalty is subject to a like tax in the State of its location. If the latter tax is less than would have been due in Massachusetts, the difference may be collected. It is also provided that personalty of a non-resident within the State which is liable to a similar tax in the State of the decedent's residence shall only be required to pay an excess *if* that like exemption is made by the laws of such other State in favor of estates of a citizen of Massachusetts. Acts of 1907, Chap. 563, § 3: A similar exemption as regards personalty of a non-resident within the State has been enacted in Connecticut. Public Acts of 1903, Chap. 63, §2, amending General Statutes, §2367–2377. This amendment is interpreted and applied in Gallup's App., 76 Conn. 617 (1903).

[1] Brown v. Benzinger, 84 Atlantic Rep. 79 (Md., 1912).

[2] Dyers Case, 2 Herr, 5 fo. 5 pl. 26 (1415); Ipswich Tailors Case, 11 Rep. 53 (1614).

[3] Mitchell v. Reynolds, 1 P. Wms. 181, 1 Sm. L. C. 430 (1711), Lord Mansfield: "In all restraints of trade where nothing more appears, the law presumes them bad, but if the circumstances are set forth, that presumption is excluded and the Court is to judge of those circumstances and determine accordingly; and if upon them it appears to be a just and honest contract, it ought to be maintained."

[4] Milk v. Dunham, 1 Ch. 576 (1891); Diamond Match Co. v. Roeber, 106 N. Y. 473 (1887); Guerand v. Dandelet, 32 Md. 561 (1870).

[5] Austen v. Boys, 2 De G. & J. 635 (1858); Van Marter v. Babcock, 23 Barb. (N. Y.) 633 (1857); Davis v. Mason, 5 T. R. 118 (1793); *contra:* Haldeman v. Simonton, 55 Iowa, 144 (1880).

Good will in general means that reputation which attaches to a man's business[6] and may be the subject of a sale.[7] True, the vendor cannot derogate from his own grant,[8] yet there is nothing to prevent him from re-entering the field of competition unless the agreement stipulates otherwise.[9] In all such instances, however, the vendor must act bona fide and must not wilfully injure or, by personal solicitation, defeat the rights of his vendee.[10]

The question then arises, to what extent the vendor may re-establish himself in the community without interfering with the vendee to whom he has assigned the good will of his prior business. It is at this point that some Courts have drawn a distinction between the good will of a trade and that of a profession, alleging that in the former, the good will attaches more to the nature of the business itself, while in the latter it adheres to and follows the person.[11] But injunctions were granted either because the vendors had agreed to leave the field of their practice, the natural inference from which being they would not return,[12] or because the vendors had been guilty of such wilful acts that the contract between the parties would have been rendered worthless without some interference by equity. In the principle case, there was an agreement to sell the business, personal effects and good will of a chiropodist's establishment and nothing was said one way or the other about the vendor returning to the neighborhood and

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[6] "Probability that the old customers will resort to the old place," per Lord Eldon in Cruttwell v. Lye, 17 Vesey, 334 (1810).

[7] Potter v. Commissioners, 10 Ex. 147 (1854).

[8] Labouchere v. Dawson 13 L. R. Eq. Cas. 322 (1872).

[9] Nantinjian v. Boornayian, 25 R. I. 151 (1903); Porter v. Gorman, 65 Ga. 11 (1880); Findlay v. Carson, 97 Iowa, 537 (1896); Cottrell v. Babcock Co., 54 Conn. 122 (1886); Chinton v. Douglas H. R. V., 1 Johns, 174 (1859); Newark Coal Co. v. Spangler, 54 N. J. Eq. 354 (1896); Williams v. Farrand, 88 Mich. 473 (1891); Smith v. Gibbs, 44 N. H. 335 (1862); Pearson v. Pearson, 27 Chan. Div. 145 (1884); Trego v. Hunt, L. R. Appeal Cases, 7 (1895), where it was said: "A man who has sold the good will of his business may do much to regain his former position and yet keep on the windy side of the law. The common law has always been jealous of any interference with trade. It was a lighter matter to interfere with freedom of contract and avoid covenants under seal. Courts of Equity could not, of course, enforce even in a modified form and within reasonable limits an agreement express or implied, which the law would have held void on the ground of public policy, nor could they treat the mere non-observance of such an agreement as fraudulent or inequitable. And so it has resulted that a person who sells the good will of his business is under no obligation to retire from the field. Trade, he undoubtedly may, and in the very same line of business. If he has not bound himself by special stipulation and if there is no evidence of the understanding of the parties beyond that which is to be found in all cases, he is free to carry on business wherever he chooses. . . . . He may set up where he will."

[10] Jennings v. Jennings, 67 L. J. Ch. 190 (1898); Ranft v. Reimers, 200 Ill. 386 (1902); Myers v. Kalamazoo Buggy Co., 54 Mich. 215 (1884); Newark Coal Co. v. Spangler, 34 Atl. Rep. 932 (1896).

[11] Dwight v. Hamilton, 113 Mass. 175 (1873); Munsey v. Butterfield, 133 Mass. 492 (1882); Foss v. Roby, 195 Mass. 292 (1907); Townsend v. Hunt, 37 Miss. 681 (1859).

[12] Beatty v. Coble, 142 Indiana 329 (1895).

re-entering the field. The vendor did come back, but in starting a new business conducted himself in such a manner as to destroy any good will which the vendee may have purchased. Yet the Court seemed to take the attitude that the mere act of returning was sufficient ground for their interference. It is submitted that the authorities upon which they base their decision[13] do not warrant such a conclusion.

Whether or not a man engaged in the occupation of a chiropodist can be said to be pursuing a profession seems of little importance, since the Court assumed for the purposes of the decision that there were sufficient characteristics and features involved in the work to warrant the distinction from a trade.

The decisions in direct point are few[14] and though the relief granted here is in accordance with the results of similar cases,[15] it is submitted that the reasoning of the Court is not borne out by the weight of opinion. The result, though a just and equitable one, opens up a wide latitude in which unwarranted conclusions may often be reached.

W. A. W., 2nd.

LEGAL ETHICS—QUESTIONS AND ANSWERS—Two more questions in legal ethics were answered by the New York County Lawyers' Association Committee on Professional Ethics, at its meeting of October 31st, 1912:

QUESTION:

May I know whether in the opinion of your Committee it would be unprofessional for an attorney, who is the counsel for an association, to send out letters to a number of its members suggesting employment upon an annual retainer?

ANSWER:

In the opinion of the Committee it is desirable that such solicitation of business should be discouraged; the Committee deems it unprofessional.

QUESTION:

Over a year ago a client, whom we had represented for some time, introduced to us a Mr. X, who requested us to represent him in various matters. Our relations continued on a pleasant basis for a period of several months, during which time we undertook litigation in various Courts for X.

About three months ago, we informed X that we would no longer be able to act as his attorneys, unless he paid us for our services. Mr. X, who originally paid us a retainer of $200, agreed that we were entitled to receive a sum of several times that amount for services performed to the then date, and stated that he would arrange to let us have a check in a few days.

Since that time, Mr. X has studiously avoided our office and ignored all communications. We appear as attorneys for him in a number of litigated

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[13] Bagly & Rivers Co. v. Rivers, 87 Md. 401 (1898); Yeakley v. Gaston, 50 Texas Civil App. 405 (1908): in this case the good will had not been sold and what the Court said in regard to covenants not to re-enter being implied was *dictum*.

[14] Angier v. Webber, 14 Allen, 211 (1867), in which case there was an express covenant.

[15] Dwight v. Hamilton, *supra*.